

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

**UNITED STATES OF AMERICA,
Plaintiff,**

v.

**[3] FRANCOIS JEAN,
Defendant.**

Criminal No. 22-100 (ADC)

**MOTION TO CONTINUE SENTENCING HEARING TO ADDRESS OBJECTION
TO PSR**

TO THE HONORABLE COURT:

COMES NOW, the United States of America, through the undersigned attorney, and to this Honorable Court very respectfully states and prays as follows:

1. The above defendant is scheduled to be sentenced this Thursday January 12, 2023. (ECF No. 48).

2. However, the Defendant filed a formal objection to the PSR last week on January 5, 2023. (ECF No. 70). The Defendant objects to the drug quantity used to calculate the Defendant's base offense level in the PSR and contends that the full weight of the 174 bricks of suspected cocaine seized in this case should not be used to determine the defendant's base offense level because the lab report shows that only 9 of the 174 bricks were tested and confirmed to contain cocaine. (*Id.*).

3. The United States will be filing a written response to the Defendant's objection. A "sentencing court must determine drug quantity only by a preponderance of the evidence." *United States v. Cintron-Echautequi*, 604 F.3d 1, 6–7 (1st Cir. 2010). Courts have routinely used random test samples and statistically based drug-quantity extrapolations to support that the full quantity of

a population of similar items contains drugs. *See, e.g., United States v. Scalia*, 993 F.2d 984, 988–90 (1st Cir. 1993) *United States v. Self*, 681 F.3d 190, 201–02 (3d Cir. 2012); *United States v. Jackson*, 470 F.3d 299 (6th Cir. 2006); *United States v. Pirre*, 927 F.2d 694, 696–97 (2d Cir. 1991).

4. Additionally, to fully address the Defendant’s objection and substantiate that the drug quantity to be used should be the full 174 kilograms seized, the United States is preparing to present expert testimony at the sentencing hearing. This expert testimony will consist of: 1) the chemist who tested the drugs and 2) likely a statistical expert, who can explain the statistical analysis and conclusions that can be drawn from a random sample of 9 bricks that all tested positive to cocaine.

5. Since the Defendant filed his formal objection less than a week ago, the United States has been proactively trying to secure the aforementioned expert testimony. However, more time is needed to properly obtain and prepare this expert testimony to thoroughly address the objection at the sentencing hearing.

6. The chemist who tested the drugs is no longer with the DEA and it took some time to get in contact with her. The undersigned was able to speak with her yesterday for the first time. She is willing and able to testify, but there are logistical challenges that need to be worked out so she can testify. The United States is still in the process of identifying and securing the appropriate expert to testify on the statistical analysis.

7. Given the above, the United States requests that the sentencing hearing be continued at least 30 days, to allow the United States to secure and prepare the expert testimony needed to substantiate the appropriate drug quantity to be used at sentencing. The United States also requests that it be given until one week before the new sentencing date to respond formally to the Defendant’s objection and file the government’s sentencing memorandum.

WHEREFORE, the United States respectfully requests that the sentencing hearing for the above defendant be continued for at least 30 days and that the government's response to the Defendant's objection and sentencing memorandum be due one week before the new sentencing hearing date.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this January 10, 2023.

W. STEPHEN MULDROW
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was uploaded today, January 10, 2023, into the Court's website using the CM/ECF system, and a true and correct copy will be served upon counsel of record through this system.

/s/ Antonio L. Perez-Alonso
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